

SERVICE DATE - LATE RELEASE OCTOBER 17, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-391 (Sub-No. 8X)

RED RIVER VALLEY & WESTERN RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN DICKEY COUNTY, ND AND BROWN COUNTY, SD

Decided: October 16, 2001

Red River Valley & Western Railroad Company (RRVW) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon approximately 18.3 miles of rail line from milepost 134.65 in or near Oakes, in Dickey County, ND, to milepost 116.3 in or near Hecla, in Brown County, SD. Notice of the exemption was served and published in the Federal Register on September 7, 2001 (66 FR 46863) and the exemption became effective on October 9, 2001.

On October 5, 2001, prior to the exemption's effectiveness, the proceeding was reopened and the exemption was made subject to conditions, including those requiring that RRVW: (1) retain its interest in and take no steps to alter the historic integrity of all sites and structures on that segment of the line located in South Dakota until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) consult with the U.S. Army Corps of Engineers, Omaha District, to determine if permits are required under section 404 of the Clean Water Act, 33 U.S.C. 1344, and under section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 401 et seq.; and (3) prior to any salvage, consult with the North Dakota Department of Health, Environmental Health Section, the South Dakota Department of Environment and Natural Resources, and the North Dakota Office of the State Engineer to address their concerns. By notice filed on October 12, 2001, RRVW stated that, on October 9, 2001, it consummated the abandonment, fully exercising the authority granted.

The Board's regulations adopted in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), include a notice of consummation requirement at 49 CFR 1152.29(e)(2), which is designed to provide clear evidence of when an authorized abandonment has been consummated and thus is designed to avoid litigation over whether or not a line has been abandoned. Section 1152.29(e)(2) requires that:

A railroad that receives authority from the Board to abandon a line . . . shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). The notice shall provide the name of the STB proceeding and its docket number, a brief description of the line, and a statement

that the railroad has consummated, or fully exercised, the abandonment authority on a certain date. The notice shall be filed within 1 year of the service date of the decision permitting the abandonment (assuming that the railroad intends to consummate the abandonment). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (such as outstanding conditions . . .).

The historic preservation condition and the environmental conditions imposed in this proceeding are regulatory barriers to consummation. There is no indication that any of these conditions has been satisfied and indeed the historic preservation condition would have to be removed following completion of the section 106 process before abandonment consummation may occur. Accordingly, RRVW's filing will be rejected as it cannot under these circumstances provide valid notice of consummation of the proposed abandonment.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The notice of consummation filed on October 12, 2001, is rejected.
2. This decision is effective on its service date.
3. By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary